

April 13, 2021

Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
301 7th Street, SW  
Washington, DC 20528

Troy Miller  
Senior Official Performing the Duties of  
the Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Ave. NW  
Washington, DC 20229

Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs  
Enforcement  
500 12th St., S.W.  
Washington, DC 20536

David S. Ferriero  
Archivist of the United States  
700 Pennsylvania Avenue N.W.  
Washington, DC 20408, and  
8601 Adelphi Road  
College Park, MD 20740

Dear Messrs. Mayorkas, Johnson, Miller, and Ferriero:

We write to urge the Department of Homeland Security (DHS) and the National Archives and Records Administration (NARA) to ensure that records documenting serious abuse, neglect, and misconduct within our immigration system are not destroyed pursuant to records disposal schedules approved by NARA. Without this evidence, we cannot protect the legal rights of victims and their families, or empower Congress to fulfill its oversight and legislative functions. These documents are critical in our fight to shed light on an immigration detention system that is both shrouded in secrecy and rife with human rights abuses. We urge the Biden Administration and NARA to take immediate action to ensure that this critical documentary evidence is not erased from history.

Since 2017, NARA has approved three records disposal schedules authorizing U.S. Immigration and Customs Enforcement (ICE) to destroy records of abuse, neglect, misconduct, and civil rights violations of detained people.<sup>1</sup> NARA is also currently considering a proposed destruction schedule covering similar records of U.S. Customs and Border Protection (CBP).<sup>2</sup> On March 12, 2021, a federal judge invalidated one of these records schedules, which would have allowed ICE to destroy records of sexual assault and abuse, death investigations, and abusive solitary confinement practices, among other records.<sup>3</sup> The court ruled that NARA, in approving the ICE records schedule, “failed to evaluate the research value of the ICE records” and “failed to address significant and relevant public comments.”<sup>4</sup>

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<sup>1</sup> See Civil Rights Records, DAA-0567-2015-0010 (approved May 31, 2017), <https://bit.ly/3tunD62>; Detainee Records, DAA-567-2015-0013 (approved December 11, 2019), <https://bit.ly/3vJKYT2>; Office of Professional Responsibility, DAA-0567-2015-0012 (approved March 16, 2020), <https://bit.ly/38Vkf8Q>.

<sup>2</sup> See Administrative and Management Records: Internal Investigation Records, DAA-568-2018-0001 (submitted May 10, 2018), <https://bit.ly/3c4fejX>.

<sup>3</sup> *CREW v. NARA*, 2021 WL 950142 (D.D.C. Mar. 12, 2021); Press Release, [Judge Stops ICE from destroying records of abuse](https://www.dhs.gov/judge-stops-ice-from-destroying-records-of-abuse), *CREW*, March 12, 2021, <https://bit.ly/3sj8Gnh>.

<sup>4</sup> *CREW*, 2021 WL 950142, at \*7.

Among the comments that motivated the court’s ruling was a September 2017 letter from “28 congressional representatives . . . urging NARA” to preserve the ICE records in light of “the relatively recent government restructuring of our immigration agencies, the increased centrality of immigration in American public debate, and strong congressional attention to this issue,” all of which “indicate that the treatment of immigrants will be of high historical and research value to future scholars and legislators in understanding our country’s actions during this moment in time.”<sup>5</sup>

As you evaluate how to proceed with these matters, we wish to reiterate what we and our colleagues told NARA in September 2017: records documenting serious abuse, neglect, and misconduct in our immigration system should be preserved, not destroyed. Period.

Recent reports have only heightened our concerns. A February 2021 report shows, for instance, that ICE detention centers have had “some of the worst [COVID-19] outbreaks in the country,” and that “clear inaction by ICE and its (for-profit) subcontractors has allowed the virus to run rampant.”<sup>6</sup> ICE has “withheld protective equipment; transferred detainees needlessly between facilities; ignored detainees’ medical needs; and physically and mentally abused detainees with fists, pepper spray, and solitary confinement for seeking medical care.”<sup>7</sup> ICE also adopted policies that “significantly differ” from those established by the Centers for Disease Control and Prevention,<sup>8</sup> drawing sharp criticism from public health experts.<sup>9</sup> As of March 12, 2021, ICE still had no agency-wide plan for providing COVID-19 vaccines to detained people, nor could it say how many detained people had been vaccinated.<sup>10</sup>

Alarming revelations of abuse at specific ICE facilities have also emerged in the last year. A September 2020 whistleblower complaint provided a horrific account of a doctor performing invasive procedures on detained women without their consent at an ICE detention center in Georgia.<sup>11</sup> The whistleblower further alleged “jarring medical neglect” at the facility, including “refusal to test detained immigrants for COVID-19 who have been exposed to the virus and are symptomatic, shredding of medical requests submitted by detained immigrants, and fabricating medical records.”<sup>12</sup> 173 members of Congress swiftly called for an Inspector General investigation of the whistleblower’s claims, noting they hearken back to the “shameful history of sterilization in the United States, in particular sterilization of people of color and incarcerated people.”<sup>13</sup> Separately, an August 2020 complaint claimed that guards at an ICE detention center

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<sup>5</sup> *Id.* at \*4.

<sup>6</sup> Eli M. Cahan, America’s Immigration System Is a COVID Superspreader, *Scientific American*, Feb. 26, 2021, <https://bit.ly/3sbemzD>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> John J. Openshaw and Mark A. Travassos, COVID-19 Outbreaks in US Immigrant Detention Centers: The Urgent Need to Adopt CDC Guidelines for Prevention and Evaluation, 72:1 *Clinical Infectious Diseases* 153, January 2021, <https://bit.ly/3IGSEkg>.

<sup>10</sup> Maria Sacchetti, ICE has no clear plan for vaccinating thousands of detained immigrants fighting deportation, *Washington Post*, March 12, 2021, <https://wapo.st/3tLBAwE>.

<sup>11</sup> Letter from Project South to DHS OIG, Sept. 14, 2020, <https://bit.ly/2Ph6LAO>.

<sup>12</sup> *Id.*

<sup>13</sup> Letter from 173 Members of Congress to DHS Inspector General, Sept. 15, 2020, <https://bit.ly/3960zTo>.

in Texas “sexually assaulted and harassed inmates in a ‘pattern and practice’ of abuse.”<sup>14</sup> And an October 2020 complaint described reports that officials at an ICE detention center in Mississippi violently coerced immigrants into signing their own deportation documents, including through the use of “physical abuse and pepper spray.”<sup>15</sup>

These are not isolated incidents; they are instead emblematic of an immigration system rife with human rights violations. Recognizing this unfortunate reality, several members of Congress have called for fundamentally restructuring our immigration agencies, and implementing a system that prioritizes human dignity. DHS and its components have also continued to be the focus of intense congressional oversight, which the agency has often resisted.<sup>16</sup>

For Congress to effectively perform its oversight and legislative functions, it is essential that the government permanently retain records reflecting serious abuse, neglect, and misconduct in our immigration system. Retention of such records is necessary to protect the legal rights of victims and their families, to identify recurring trends or patterns of abuse over time, to facilitate meaningful oversight of the agencies’ activities, and to inform the type and scope of potential legislative efforts. The records thus have considerable long-term value due to, among other things, their “anticipated use . . . by the Government.”<sup>17</sup>

We appreciate that NARA has the immense responsibility of managing the vast quantity of records generated by agencies across the federal government. But the records at issue here provide critical evidence needed by Congress and others to scrutinize the actions of a uniquely problematic agency with a long and disturbing history of abuse. In short, these are no ordinary federal records, and they must not be treated as such.

We therefore urge DHS and NARA to take immediate action to ensure that these records are preserved. At a minimum, DHS and NARA should rescind the records schedules at issue and reappraise the records in accordance with Section 10 of NARA’s Appraisal Policy, based on the recent legal and factual developments discussed above.<sup>18</sup>

Thank you for your attention to this matter; we look forward to your response.

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<sup>14</sup> Lomi Kriel, ICE Guards “Systematically” Sexually Assault Detainees in an El Paso Detention Center, *Lawyers Say*, *ProPublica*, Aug. 14, 2020, <https://bit.ly/32wrdBO>.

<sup>15</sup> Letter from Southern Poverty Law Center and Freedom For Immigrants to ICE and DHS, Oct. 7, 2020, <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5f7f17f39e044f47175204fb/1602164723244/Re+CRCL+Complaint+ICE%27s+Use+of+Torture+to+Coerce+Immigrants+to+Sign+Immigration+Documents+at+Adams+County+Correctional+Facility.pdf>.

<sup>16</sup> Press Release, Oversight Committee Finds ICE Misleads American People on Spread of Coronavirus in Detention Facilities, House Committee on Oversight and Reform, May 14, 2020, <https://bit.ly/3IL1LR8>.

<sup>17</sup> Appraisal Policy of the National Archives, App. 1, Sept. 2007, <https://bit.ly/390upse>.

<sup>18</sup> *See id.* § 10 (“NARA will reappraise records when there is compelling evidence that earlier appraisal decisions require review. In such circumstances, NARA will seek Federal agency and public involvement in the reappraisal process.”).

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Sincerely,



RASHIDA TLAIB  
Member of Congress



HENRY C. "HANK" JOHNSON  
Member of Congress

KAREN BASS  
Member of Congress

JESÚS G. "CHUY" GARCÍA  
Member of Congress

JAMAAL BOWMAN  
Member of Congress

RAÚL GRIJALVA  
Member of Congress

CORI BUSH  
Member of Congress

JAHANA HAYES  
Member of Congress

ANDRÉ CARSON  
Member of Congress

PRAMILA JAYAPAL  
Member of Congress

JUDY CHU  
Member of Congress

MONDAIRE JONES  
Member of Congress

STEVE COHEN  
Member of Congress

JAMES P. MCGOVERN  
Member of Congress

J. LUIS CORREA  
Member of Congress

GRACE F. NAPOLITANO  
Member of Congress

TED DEUTCH  
Member of Congress

ELEANOR HOLMES NORTON  
Member of Congress

ILHAN OMAR  
Member of Congress

ALBIO SIRES  
Member of Congress

MARK POCAN  
Member of Congress

MARK TAKANO  
Member of Congress

AYANNA PRESSLEY  
Member of Congress

JUAN VARGAS  
Member of Congress

MICHAEL F.Q. SAN NICOLAS  
Member of Congress

BONNIE WATSON COLEMAN  
Member of Congress

MARY GAY SCANLON  
Member of Congress

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